THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.6377 OF 2006

ORDER:

The petitioner claims to be daughter of one Smt.K.Veeramma. It is alleged that Veeramma purchased land admeasuring Acs.3.25 in survey No.139 of Rudra Bharathipet village of Chennur Mandal in Kadapa District, under registered sale deed, dated 07.08.1969. She was allegedly cultivating the land until her death on 29.03.2000. Thereafter, it is also alleged that Veeramma obtained agricultural loan from Primary Agricultural Credit Society and the loan is yet to be repaid fully. After death of her mother, the petitioner and other children succeeded to the property and they allegedly have joint ownership. It is alleged that the first respondent, namely, Mandal Revenue Officer issued house site pattas in the land in survey No.139 of the Rudra Bharathipet village and in spite of request, the details were not disclosed to the petitioner. It is further alleged that the beneficiaries to whom the land was allotted started to dig the land for construction, and therefore, the present writ petition is filed seeking a writ of Mandamus declaring the action of the first respondent in assigning the land allegedly belonging to the petitioner without due process of law as illegal and arbitrary and violative of Articles 14 of the Constitution of India.

The matter was initially listed on 31.03.2006. While opposing the writ petition, the learned Assistant Government Pleader for Revenue (General) brought to the notice of this Court that the land in survey No.139 is a Government land and that the petitioner has no locus to file the writ petition. Therefore, this Court adjourned the matter to enable the respondents to file counter affidavit with a view to dispose of the matter at the admission stage itself. Counter affidavit is filed on 25.04.2006 and the petitioner also filed a reply affidavit.

In the counter affidavit, it is stated that the land admeasuring Acs.3.25 in survey No.139 of Rudra Bharathipet village is classified as assessed waste belonging to the Government and that the petitioner or any persons do not have any right over the said land. It is further stated that in 2003 itself, the land was divided into house sites and was allotted to 127 landless poor persons for construction of houses and that some of them have already constructed houses. The allegation that the petitioner's mother purchased the property is denied and it is alleged that the petitioner is illegally claiming the right over the property.

As noticed, the petitioner has filed reply affidavit reiterating that she has a joint right, title and possession to the land and that unless and until the Government produces cogent material, her title cannot be rejected.

Learned counsel for the petitioner while emphasizing that the Government has not placed any material before this Court, submits that at no point of time, the respondent issued any notice to the petitioner or other co-sharers and that the Government has set up a frivolous case to claim the land. **Per contra**, the learned Assistant Government Pleader submits that the land in survey No.139 is a Government land and that the petitioner has no right over the property. He also

produced the Court a Xerox copy of the relevant pages from Re-Survey and Re-Settlement Register of Rudra Bharatipet village and submits that the land in survey No.139 is classified as Government land and that the petitioner has no title. He also reiterated other contentions taken in the counter affidavit.

A perusal of the Re-survey and Re-Settlement Register would show that survey No.139 is classified as Government land and therefore, it is reasonable to draw an inference that it is assessed waste dry land belonging to the Government. As rightly pointed out by the learned Assistant Government Pleader, except filing 'declaration creating charge signed by the petitioner's mother', no material is placed before this Court to show that the petitioner has any *prima facie* case. On the contrary, as per Section 74 of the Evidence Act, 1872, the document i.e., Re-Survey and Re-Settlement Register, produced by the learned Assistant Government Pleader is a public document and the same cannot be lightly discarded. However, this Court hastens to add that when there is a title dispute between two persons or between a person and the Government, such title dispute cannot be resolved in the proceedings under Article 226 of Constitution of India. This is well settled. If any authority is required, a reference may be made to the judgments of the Supreme Court in **State of Rajasthan v Bhawani Singh, Mohan Pandey v Usha Rani Rajgaria** and **Dwarka Prasad Agarwal v B.D.Agarwal.** In **Dwarka Prasad Agarwal** (supra), it was held:

> A writ petition is filed in public law remedy. The High Court while exercising a power of judicial review is concerned with illegality, irrationality and procedural impropriety of an order passed by the State or a statutory authority. Remedy under Art.226 of the Constitution of India cannot be invoked for resolution of a private law dispute as contra distinguished from a dispute involving public law character. It is also well-settled that a writ remedy is not available for resolution of a property or a title dispute. Indisputably, a large number of private disputes between the parties and in particular the question as to whether any deed of transfer was effected in favour of M/s.Writer and Publishers Pvt. Ltd. as also whether a partition or a family settlement was arrived or not, were pending adjudication before the Civil Courts of competent jurisdiction. The reliefs sought for in the writ petition primarily revolved round the order of authentication of the declaration made by one of the respondents in terms of the provisions of the said Act. The writ petition, in the factual matrix involved in the matter, could have been held to be maintainable only for that purpose and no other.

In view of the above, the petitioner cannot be given any relief in this writ petition. It shall, however, be open to the petitioner to file appropriate suit in a civil Court. Needless to mention that the observations made hereinabove on the point urged are intended only for the purpose of this order and any Court or legal forum has to decide the dispute without being influenced by such observations.

The writ petition, with the above observations, is dismissed. No costs.

(V.V.S.RAO,J)

.04.2006

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